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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,786

11/21/2003

Edward Paul Carlin

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/719,786
Filing Date: November 21, 2003
Appellant(s): CARLIN, EDWARD PAUL

James E. Oehlenschlager
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 15 June 2010 appealing from the Office action mailed 18 December 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 5-7, 9-11, 13, and 18-20 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2003/0167048	POLICAPPELLI	9-2003
5,911,712	LEUTWYLER et al.	6-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5-7, 9-11, 13, and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Policappelli (2003/0167048).

Policappelli discloses a tampon comprising an insertion end 11, a withdrawal end 15, longitudinal and radial axes, and an outer surface, as shown in figure 1. The tampon comprises a core of cotton material, as disclosed in paragraph [0019], which is a fibrous material. With respect to the compression of the core, it is noted that the cotton material of the tampon inherently has some degree of compression, and since the present claims do not disclose a quantitative degree of compression, the cotton material of Policappelli is considered to fulfill the claimed limitations of highly compressed. The first surface area of the tampon adjacent the insertion end 11 comprises a plurality of depressions located between protuberances 17 and 18, as shown in figure 5. The depressions are generally square in shape, and are evenly

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spaced in a checkerboard pattern, as shown in figure 5. The protuberances 17 and 18 are arranged in a pattern of evenly spaced diagonal lines, as shown in figure 5. The second surface area of the tampon, adjacent the withdrawal end 15, is free of the protuberances and depressions, as shown in figure 5.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Policappelli (2003/0167048) in view of Leutwyler et al. (5,911,712).

Policappelli discloses all aspects of the claimed invention with the exception of a finger indent. Leutwyler discloses a tampon having a finger indent at the withdrawal end, as shown in figure 3, to allow for easy insertion of the tampon. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon of Policappelli with a finger indent, as taught by Leutwyler, to allow for easy insertion of the tampon.

(10) Response to Argument

In response to the Appellant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the protuberances comprised of compressed fibrous material) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The rejected claims do not disclose the protuberances comprise the same material of the absorbent body of the tampon, nor do they disclose the protuberances

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comprise compressed fibrous material. The present claims disclose the tampon has a first surface area, and further discloses at least a portion of the first surface area comprises protuberances.

Since the present claims do not disclose from what material the protuberances are formed, it is within the scope of the claims as presently written that the protuberances are formed from a material that is applied to the surface of the tampon. The tampon of Policappelli comprises protuberances applied on the surface area of the tampon, as shown in figure 5, and therefore fulfills the limitations of the present claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

C. Lynne Anderson

/Lynne Anderson/

Examiner, Art Unit 3761

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